

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

KYMM V. CHANDLER,

Petitioner, : Case No. 2:24-cv-3982

- vs -

Chief Judge Sarah D. Morrison
Magistrate Judge Michael R. Merz

SHELBIE SMITH, WARDEN¹,
Belmont Correctional Institution,

:
Respondent.

ORDER VACATING STAY; REPORT AND RECOMMENDATIONS

On October 8, 2024, the undersigned withdrew the then-pending Report and Recommendations and stayed this case pending Petitioner's exhaustion of state court remedies (ECF No. 6). After Assistant Attorney General Fosnaught entered an appearance, she provided authority holding that a stay under *Rhines v. Weber*, 544 U.S. 269 (2005), was not necessary to protect Petitioner's habeas corpus rights because a dismissal without prejudice would not subject Petitioner to the second or successive bar after exhaustion of state court remedies. See Notice (ECF No. 15, PageID 70) citing *Carlson v. Pitcher*, 137 F.3d 416, 419-20 (6th Cir. 1998).

Accordingly the stay previously entered is VACATED and the Magistrate Judge respectfully recommends the Petition herein be dismissed without prejudice pending exhaustion

¹ Upon notice from the Attorney General that Shelbie Smith is Warden of the Belmont Correctional Institution, the Court, acting *sua sponte* pursuant to Fed.R.Civ.P. 253, hereby substitutes her as Respondent in this case and amends the caption as set forth above.

of state court remedies on the same authority cited in the prior Report and Recommendations (ECF No. 4). Because reasonable jurists would not disagree with this conclusion, it is also recommended that Petitioner be denied a certificate of appealability and that the Court certify to the Sixth Circuit that any appeal would be objectively frivolous and should not be permitted to proceed *in forma pauperis*.

March 27, 2025.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Because this document is being served by mail, three days are added under Fed.R.Civ.P. 6, but service is complete when the document is mailed, not when it is received. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. #